United Nations A/61/369

General Assembly

Distr.: General
21 September 2006

Original: English

Sixty-first session
Agenda item 67 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro.

* The report was submitted after the deadline so as to include the most recent developments, including within the Security Council.

06-53070 (E) 051006

Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission on Human Rights in its resolution 1992/58 and extended most recently by the Human Rights Council in its decision 1/102 by which the Council decided to extend, exceptionally for one year, the mandates and mandate holders of the special procedures of the Commission.

The Special Rapporteur has not been permitted to conduct a fact-finding mission to Myanmar since November 2003. While he has not been granted access to the country during the period covered by the present report, he has continued to fulfil his mandate to the best of his ability based on information collected from a variety of independent and reliable sources.

In the past two years, the reform process proposed in the "seven-point road map for national reconciliation and democratic transition", which was meant to become eventually open to various relevant actors, has been strictly limited and delineated. As a result, the political space has been redefined in narrower terms. In addition, obstructions in the past couple of years have held back the pace and inclusive nature of the reforms which were required for democratization. The work of the National Convention has been adversely affected by this evolution.

Through the decades, the space for the establishment of civilian and democratic institutions has been seriously curtailed. The capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hampered by sustained practices of impunity. This situation has contributed to reinforce inequality and increased the gap between the poorest and the richest.

On 27 May 2006, the house arrest of Aung Sang Suu Kyi was further prolonged by 12 months in spite of various international appeals, including by the Secretary-General of the United Nations. As at the end of August 2006, the number of political prisoners was estimated at 1,185. From April to July 2006, 1,038 members of the National League for Democracy were reportedly forced to resign from the party following intimidation and threats. The Special Rapporteur has consistently indicated that national reconciliation requires meaningful and inclusive dialogue with and between political representatives. He firmly believes that the national reconciliation and the stability of Myanmar are not well served by the arrest and detention of several political leaders or by the severe and sustained restrictions on fundamental freedoms.

The persecution of members of political parties in the opposition and human rights defenders shows that nowadays the road map for democracy faces too many obstacles to bring a genuine transition. In the past, the Special Rapporteur acknowledged that the road map could play a positive role in the political transition. Sadly, the positive momentum in the early years of his mandate is apparently stalled.

The Special Rapporteur remains particularly concerned about the continuing impunity, which has become systematic and must be urgently addressed by the Government of Myanmar. It has become increasingly clear that the persistent

impunity does not only stem from a lack of institutional capacity. Impunity has allowed accountability to be avoided for acts that have oppressed voices questioning existing policies and practices. Several individuals and groups responsible for committing serious violations of human rights, in particular members of the military, have not been prosecuted. There is also little evidence that these serious crimes have been investigated by relevant authorities.

Grave human rights violations are received among the established structures of the State Peace and Development Council and indulged not only with impunity but authorized by the sanction of laws. In that respect, the Special Rapporteur is also very concerned by the continued misuse of the legal system, which denies the rule of law and represents a major obstacle for securing the effective and meaningful exercise of fundamental freedoms by citizens. He considers especially as a matter of grave concern the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses.

The Special Rapporteur is very concerned by the ongoing military campaign in ethnic areas of eastern Myanmar and by its effects on human rights, especially on civilians who have been targeted during the attacks. The situation should be considered in connection with the widespread practice of land confiscation throughout the country, seemingly aiming to anchor military control, especially in ethnic areas. Such a practice has led to numerous forced evictions, relocations and resettlements, situations of forced migration and internal displacement. Given the scale of the current military campaign, the situation may lead to a humanitarian crisis if it is not addressed immediately.

The Special Rapporteur takes note of the recent vote of the Security Council on 15 September 2006 to include Myanmar in its agenda. He believes that a forthcoming debate of the Council on Myanmar may offer an opportunity to speed up the process of transition towards democracy.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission on Human Rights in its resolution 1992/58 of 3 March 1992 and extended in resolution 2005/10. By its decision 1/102, the Human Rights Council decided to extend all mandates and mechanisms transferred to it by the Commission on Human Rights, pursuant to resolution 60/251 of the General Assembly. This extension implies similar reporting obligations for the Special Rapporteur as those contained in the annual resolutions of the Commission, including reporting to the General Assembly.

2. During the course of his mandate, which started in December 2000, the Special Rapporteur was authorized by the Government of Myanmar to visit the country on six occasions. However, the Special Rapporteur has not been allowed to conduct a fact-finding mission to Myanmar since November 2003. While he has not been granted access to the country during the period covered by this report, he has continued to fulfil his mandate to the best of his ability based on information collected from a variety of independent and reliable sources.

3. Throughout the six-year period of the Special Rapporteur's mandate, substantiated reports of grave human rights violations continued to be received on an ongoing basis. With the vast majority of his communications to the authorities not receiving a response, little evidence was available to the Special Rapporteur of a commitment by the Government to responding to these human rights violations.

4. The Special Rapporteur, however, takes note of recent replies by the Government to official communications by the special procedures on human rights. He finds this evolution encouraging and urges the Government to continue its dialogue with the Special Rapporteur and other special procedures of the newly established Human Rights Council.

5. The present report covers the period from February to September 2006 and should be read in line with the recent report the Special Rapporteur presented at the second session of the Human Rights Council in September 2005 (E/CN.4/2006/34).

II. Activities of the Special Rapporteur

6. In view of the fact that he continued to be prevented from visiting Myanmar, the Special Rapporteur visited neighbouring countries in the region where he received the support of all United Nations country teams. From 11 to 26 February 2006, the Special Rapporteur visited India, Malaysia, Indonesia and Thailand where he conducted consultations with Foreign Ministry representatives, diplomats, Indian parliamentarians, the Inter-Parliamentary Caucus of the Association of Southeast Asian Nations (ASEAN) in Malaysia, Indonesia and Thailand, as well as non-governmental actors.

7. Additionally, in Jakarta, the Special Rapporteur held meetings with the Secretariat of ASEAN, the former Minister for Foreign Affairs of Indonesia and academic scholars. In Kuala Lumpur, he held a meeting with the former Special Envoy of the Secretary-General to Myanmar. In Bangkok, consultations were also conducted with representatives of United Nations agencies from Myanmar and

Thailand, members of the diplomatic community, and non-governmental organizations operating in Myanmar, Thailand and the Thai-Myanmar border.

8. In May 2006, the Special Rapporteur met with the United Nations High Commissioner for Refugees in Geneva and relevant staff members from his Office.

9. The Special Rapporteur presented his report to the newly established Human Rights Council in September 2006. While in Geneva, he met with representatives of the diplomatic mission of Myanmar and held consultations with representatives of States Members of the United Nations and officials from United Nations agencies, members of civil society organizations and the academic community.

10. At the request of the Special Rapporteur, the Desk Officer on Myanmar of the Office of the United Nations High Commissioner for Human Rights (OHCHR) who assists his mandate, conducted a mission in the region from 22 August to 5 September 2006, to collect updated information, with the support of the regional office of OHCHR, United Nations agencies, civil society organizations and experts.

11. In September 2006, the Special Rapporteur met with the Southeast Asia Unit of the European Union (EU) in Brussels. He also had a discussion with directors of EU Council Working Party on Human Rights and made a presentation to EU Asia-Oceania Working Party.

12. During the reporting period, the Special Rapporteur continued to have regular contacts with the Mission of Myanmar in Geneva. He also continued to share his findings with the High Commissioner for Human Rights in Geneva, and the Executive Office of the Secretary-General, the Department of Political Affairs and the Special Adviser to the Secretary-General on the prevention of genocide in New York and his team.

III. Major developments and human rights issues of concern

A. Political developments

13. First convened in 1993, the National Convention was adjourned in May 1996 until 2004 when it was reconvened for an eight-week period (17 May to 9 July 2004). Having been again suspended for a further nine months, following its previous session (17 February to 31 March 2005), the National Convention reconvened on 5 December 2005. On 31 January 2006, after meeting for nearly two months without significant progress, the National Convention adjourned once more. The Special Rapporteur addressed this issue in details in his report to the Commission on Human Rights (E/CN.4/2006/34), which was discussed during the second session of the Human Rights Council in September 2006 at Geneva. He was deeply dismayed to learn that "no progress towards instituting genuine democratic reform had been made since the previous session. Procedural conditions and restrictions remain, legitimate political representatives are not included and apparently the concerns of the ethnic parties have not been addressed. No deviation from the preordained agenda and defined principles set by the Government has been reportedly accepted" (E/CN.4/2006/34, para. 23). In September 2005, the Government announced the resumption of the National Convention process by 10 October.

14. The Special Rapporteur regrettably notes that the recommendations put forward on several occasions by the General Assembly and the Commission on Human Rights calling for the National Convention to be placed on a solid democratic foundation, have been disregarded by the Government of Myanmar. NLD and ethnic parties have not been effectively and meaningfully associated with the National Convention. The drafting process of the Constitution has been marked by a lack of transparency. It has been reported that nine chapters had been completed, with six more left to go. Constitutional proposals submitted by ethnic nationality groups were reportedly rejected.

15. Persecution and harassment of members of NLD continue. In February 2005, NLD offered to recognize the State Peace and Development Council (SPDC) as the legitimate transitional Government if it agreed to convene the Parliament elected in 1990. SPDC rejected the offer and intensified harassment of NLD members. At the end of August 2006, the number of political prisoners was estimated at 1,185, a figure which does not include the numerous prisoners reportedly detained in ethnic areas and secret jails since the Special Rapporteur was not in a position to verify these allegations. He will further explore the issue in his next report to the Human Rights Council, in June 2007.

16. The house arrest of Aung Sang Suu Kyi was further prolonged by 12 months on 27 May 2006 in spite of various appeals. The terms of detention of other prominent NLD leaders, like U Tin Oo, Than Nyein and May Win Myint, were also extended. Several leaders of ethnic political parties, including the chairman of the Shan NLD, have been detained and given extraordinary severe prison terms of 100 years or more. A recent report, entitled "Eight seconds of silence", released by the Assistance Association of Political Prisoners documents allegations of the deaths of 127 democracy advocates and human rights defenders since 1988 while in detention or shortly after their release. In the past year alone, the number of deaths has reportedly risen to 10.

17. On 25 May 2006, the Special Rapporteur appealed to the Government of Myanmar to release Aung Sang Suu Kyi unconditionally and to free all political prisoners. On 19 June, at the occasion of the inaugural session of the Human Rights Council, the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders issued a public statement calling upon the members of the United Nations to support the Nobel Peace Prize Laureate.

18. The Special Rapporteur deeply regrets the continued imprisonment of the distinguished poet and editor U Win Tin, who spent his seventy-sixth birthday in a prison cell in Yangon last March. Imprisoned since 4 July 1989, he is now the longest serving political prisoner in Myanmar. Having been sentenced three times since 1989, each time while he was already in prison, U Win Tin is currently serving a further seven years' sentence following a letter of concern he wrote to the United Nations regarding the ill-treatment and poor conditions of political prisoners. In spite of strong expectation that he would be released last year, he remains in captivity. On 11 March 2006, the Special Rapporteur appealed to the Government to unconditionally release him and all prisoners of conscience.

19. The Special Rapporteur is also extremely worried by allegations of the forced resignation of NLD members following various forms of intimidation and threats. Since April 2006, 1,053 NLD members have reportedly been forced to resign from

the party. While NLD members in Myanmar had been under tremendous harassment, the Union Solidarity and Development Association (USDA) — established by SPDC in 1993 — recently announced its intention to become a political party and run for the next election. The Special Rapporteur believes this development is a matter of grave concern. Along the years, the Special Rapporteur received various allegations of the involvement of USDA in acts of political and criminal violence. There is a perception among many observers that USDA is being used to legitimize a transition from a military regime to a civilian government that is not genuine. These allegations also seriously question the political will of SPDC towards a legitimate democratization process in Myanmar.

20. The international community strongly reacted to the current state of the political process and human rights situation. Unprecedented pressure from ASEAN compelled Myanmar to decline its first opportunity to chair ASEAN in 2006. At its December 2005 meeting, ASEAN effectively abandoned its non-interference policy in the affairs of its member States, calling for democratic reform in Myanmar and insisting on sending an envoy. When the ASEAN Envoy was finally authorized to visit the country in March 2006, he interrupted his mission as the Government refused to let him meet with Aung San Suu Kyi. Several ASEAN members have afterwards issued very critical public statements, highlighting the significant absence of progress in terms of democracy and human rights.

21. On 18 May 2006, the United States Senate adopted a resolution calling for a legally binding, non-punitive resolution on Myanmar that would force the Government to work with the United Nations on a plan for national reconciliation. It also extended unilateral economic sanctions on Myanmar for another year.

22. From 18 to 20 May, the Under-Secretary-General for Political Affairs, Ibrahim Gambari, visited Myanmar where he met with Senior General Than Shwe and Aung San Suu Kyi. Democratization and human rights were part of the terms of reference of his mission. He further briefed the Secretary-General and the Security Council on the outcome of his visit, which was seen as a positive step for the resumption of a dialogue with Myanmar. At the request of the Government of Myanmar, a second visit of the Under-Secretary-General is being considered by the United Nations. The Special Rapporteur expresses his hope that the recent visit of the Under-Secretary-General has created a momentum that will further encourage the Government to engage more effectively with other United Nations bodies and mechanisms, such as the Human Rights Council and its special procedures.

23. In July, ASEAN Parliamentarians from Singapore, Malaysia, Indonesia, the Philippines, Thailand and Cambodia, along with fellow Parliamentarians from India, the Republic of Korea, Australia, New Zealand and the European Parliament gathered in Malaysia for a two-day conference on Myanmar. They called unanimously upon ASEAN Governments to suspend Myanmar's membership and requested the Security Council to include Myanmar in its formal agenda. The Foreign Minister of Malaysia, Syed Hamid Albar, then chairman of the Standing Committee of ASEAN, acknowledged in his message to the Conference that it would be very difficult for ASEAN Governments to ignore the views of their democratically elected legislators.

24. On 25 August, meeting for the ASEAN Inter-Parliamentary Myanmar Caucus, Cambodian Members of Parliament launched a national parliamentary caucus on

Myanmar to advocate democratization in the country. It is the sixth of its kind in ASEAN following Thailand, Indonesia, Malaysia, Singapore and the Philippines.

25. Early in September, the United States formally requested the United Nations Security Council to add Myanmar on its agenda, to potentially expose the country to international condemnation for human rights violations and other abuses. Still in September, the current rotating President of the European Union, the Prime Minister of Finland, reiterated the Union's call for the unconditional release of Myanmar's democracy leader, Aung San Suu Kyi, and urged Myanmar to improve its human rights and democracy records.

26. On 15 September, the Security Council voted by 10 votes to 4, with 1 abstention, to place Myanmar on its formal agenda. The Special Rapporteur views this decision as a major step that will allow Security Council members, individually or collectively, to formally discuss the issue of Myanmar and to request regular reports on the situation in the country from the United Nations Secretariat, including from OHCHR. The Special Rapporteur believes that a forthcoming debate of the Security Council on Myanmar may offer a positive opportunity to speed up the transition process towards democracy and to find ways to better coordinate the different approaches of the members of the Security Council towards the country, to strengthen an effective and authentic partnership with the countries of the region, to tackle protection issues while improving the level of humanitarian action, including humanitarian access, and to ensure the realization of economic, social and cultural rights.

B. Systematic human rights violations and impunity

27. The culture of impunity remains the main obstacle to the efforts in view to safeguarding and securing respect for human rights in Myanmar and creating a favourable environment for their realization. During the course of his mandate, the Special Rapporteur received reports of widespread and systematic human rights violations, including summary executions, torture, forced labour practices, sexual violence and recruitment of child soldiers. These violations have not been investigated and their authors have not been prosecuted. Victims have not been in a position to assert their rights and receive a fair and effective remedy.

28. The mob attack targeting Aung San Suu Kyi in November 1996 and the brutal Depayin massacre in May 2003 are striking examples of the culture of impunity prevailing in the country. In spite of several appeals, including by the Special Rapporteur, the Government of Myanmar did not investigate these cases and have not brought those responsible to justice.

29. Under international law, Myanmar has an obligation to thoroughly investigate grave violations of human rights, to prosecute those responsible for their perpetration and, if their guilt is established, to punish them. This means that those responsible for human rights violations must stand trial and that victims must obtain reparations.

30. Another noteworthy illustration of the consistent and continuing pattern of impunity is the high number of allegations of sexual violence against women and girls committed by members of the military. In 2002, the Special Rapporteur received report of the rape of 625 women and girls in Shan State between 1996 and

2001. For the last three years, 188 additional cases in Shan State have been brought to the attention of the Special Rapporteur. In 2004, the Special Rapporteur received report of 125 cases of rape in Kayin State over a period of one year and half. In 2005, he received reports of 37 cases involving sexual violence against 50 women and girls in Mon areas between 1995 and 2004. In 2006, he has received information about 30 cases of rape against Chin women. This trend of sexual violence is particularly alarming, bearing in mind that the figures provided are likely to be far lower than the reality as many women do not report incidents of sexual violence because of the trauma attached to it. Moreover, some reports may also not have reached the Special Rapporteur, as information on human rights abuses in these areas is mainly collected from refugees arriving at the Thai-Myanmar border. The Special Rapporteur is not aware of any initiatives by the Government of Myanmar to look into these serious human rights abuses with a view to identifying the perpetrators and bring them to justice. The failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of violence against women and girls in Myanmar.

31. Cases of forced labour represent another manifestation of the culture of impunity. The Government of Myanmar has acceded to International Labour Organization (ILO) Convention No. 29 of 28 June 1930 that prohibits forced labour, and in 2000 it issued an Order outlawing the practice. However, there have been serious shortcomings when it comes to effective implementation. Furthermore, in 2005 the Government announced a policy of prosecuting people who lodged what it considered to be "false complaints" of forced labour, leading to a situation where it is the victims rather than the perpetrators, who are punished. The State-controlled press has also published articles attacking ILO. The effect of this has been to strengthen the sense of impunity felt by those Government officials who continue to impose forced labour. The Special Rapporteur would like to insist on the importance of the ILO presence in Myanmar and commends the high quality of its work along the years.

32. The serious human rights violations described above have been widespread and systematic over the last decade as to suggest they are not simply isolated acts of individual misconduct of middle or low rank officers but rather the result of the upholding of a system under which individuals and groups have been allowed to breach the law and violate human rights without being held to account.

33. The Special Rapporteur also believes that impunity is one of the main underlying causes of the degrading economic and social conditions of rural farmers who represent the majority of the population of Myanmar. The militarization of rural areas created a vicious circle of impoverishment of villagers. The military rely on local labour forces and other resources as the result of the incapacity of the Government to deliver any forms of support for their activities (self-reliance policy). The Special Rapporteur has received many allegations of villagers who have been severely punished outside the framework of the law because they refused forced labour and the unlawful appropriation of their land, livestock, harvest and other property. While Myanmar has tremendously increased the number of its battalions nationwide since 1988, the implementation of self-reliance policies by the local military during the past decade has contributed to undermine the rule of law at the expense of the livelihoods of local communities.

C. Rule of law

34. Grave human rights violations are received among the established structures of SPDC and indulged not only with impunity but authorized by the sanction of laws. In that respect, the Special Rapporteur is seriously concerned by the continued misuse of the legal system, which denies the rule of law and represents a major obstacle for securing the effective and meaningful exercise of fundamental freedoms. The Special Rapporteur regrets to observe that the lack of independence of the judiciary has provided the "legal" basis for abuses of power, arbitrary decision-making, and exonerating those responsible for serious human rights violations. The Special Rapporteur has also repeatedly expressed concern to the Government of Myanmar about the abuse of due process in political trials and the denial of basic rights to detention. For the past six years, the Special Rapporteur received numerous reports concerning arbitrary arrest without warrant, detention incommunicado, torture or ill-treatment in pre-trial detention, death in custody and very poor conditions of detention without access to adequate food and medical treatment. He also received reports of defendants who have been denied the right to legal counsel and reports of political trials often being held in camera.

35. The Special Rapporteur considers especially as a matter of grave concern the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses.

36. Political opponents and human rights defenders are arbitrarily arrested and detained under laws promulgated by the Government as "security" legislation, should they be considered to be acting or harbouring views which are in opposition to those of the Government. Such "security" laws include the Emergency Provision Act (1950), the Unlawful Association Act (1908) and the Printers and Publishers Registration Law (1962).

37. The Special Rapporteur also notes with concern that individuals have been prosecuted after they reported cases of forced labour whereas Myanmar is bound by ILO Convention No. 29.

38. Some positive developments must, however, be acknowledged. In January 2005, Su Su Nway successfully sued her village authorities for forced labour. On 16 October 2005, she was sentenced to 18 months imprisonment following an unfair trial. The Special Rapporteur welcomes her unconditional release on 6 June 2006 and the cancellation of the remainder of her terms. On 31 October 2005, U Aye Myint, a lawyer was sentenced to seven years' imprisonment for passing to the Government complaints of farmers whose land had been confiscated by the local authorities. The Special Rapporteur is pleased to note that he was released on 8 July 2006; however, he questions the restrictive terms of this release as U Aye Myint had to sign a paper acknowledging that he would have to serve the remainder of his terms if he commits any offence in the future.

39. More recently, Law No. 5/96, which provides for up to 20 years' imprisonment to anyone who directly or indirectly instigates, protests, preaches, says or writes anything to disrupt the stability of the State and criticizes the National Convention, was used to arrest and prosecute senior Shan political representatives under charges of treason in February 2005. Since then, the Special Rapporteur has received additional allegations of people threatened to be prosecuted under this law if they criticize the National Convention.

D. Fundamental freedoms

40. SPDC has continued to impose severe restrictions on freedom of movement, freedom of expression, freedom of association and freedom of assembly. The Special Rapporteur received several reports alleging the Government's involvement in cracking down on several initiatives by people to organize themselves even for non-political purposes, such as fighting against HIV/AIDS.

41. The Special Rapporteur is very concerned by allegations he received for the reporting period. In July 2006, Myanmar authorities have reportedly forced students from Rangoon University to sign agreements declaring they will not become involved in politics or try to instigate political unrest. On 7 August, 13 pupils were reportedly arrested, one day ahead of the eighteenth anniversary of the 8888 Uprising, for laying wreaths and saluting those who gave up their lives in the struggle for democracy, in front of No. 3 State High School, Bago, in lower central Myanmar.

42. The Special Rapporteur also received reports of allegations concerning the prosecution of individuals who have communicated information that should be in the public domain to organizations and individuals inside and outside the country.

43. The Special Rapporteur is also very much concerned about the strict restrictions on freedom of movement that prevail in general in the country, but also about those imposed on specific groups, such as the Muslim minority.

E. Military operations in ethnic areas

44. Since 1948 in the country's conflict areas, millions of people have been uprooted and thousands have died every year, mostly from preventable diseases. The situation has become critical. Attacks on villages in ethnic areas by the army since late 2005 have led to extensive forced displacements. This is true for Kayin State but also other ethnic States in eastern Myanmar (Mon, Shan and Kaya) and in northern Rakhine State. Reliable and independent sources estimate that between 1996 and 2005, over 2,800 Kayin, Mon, Shan and Kaya villages have been burned down and/or relocated en masse, or otherwise abandoned as a result of military campaigns.

45. The situation in Kayin State has been well documented. Some 18,000 people are estimated to have been displaced in eastern Myanmar, with 3,000 having crossed the border to Thailand, since the beginning of 2006 because of the military campaign in Kayin State. There are reportedly a total of 540,000 internally displaced persons in eastern Myanmar with minimum prospects of return and resettlement. The Government does not recognize the existence of internally displaced persons within its borders and severely restrict access to them by United Nations agencies and other humanitarian actors.

46. Widespread violence continued to spiral for the past nine months in mountain areas outside of the military control in Toungoo, Nyaunglebin and Papun Districts of Kayin State and Eastern Bago Division. For many independent and reliable observers, it is the worst offensive and worst humanitarian situation since the 1996-97 military campaign. On 16 May 2006, the Special Rapporteur together with the Independent Expert on minority issues, the Special Rapporteur on torture and

other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health called on the Government of Myanmar to take urgent measures to end the counter-insurgency military operations targeting civilians in Northern Kayin and Eastern Bago areas. These military operations have led to the forced eviction and displacement of thousands of ethnic minority villagers. Members of the military forces allegedly acted with excessive use of force and firearms. Homes were demolished and according to reports, residents have been offered neither alternative housing nor any form of compensation. Other reports seem to corroborate very serious allegations of unlawful killings, torture, rape and forced labour. The state of destitution in which many of the displaced persons are forced to live is alarming. These difficulties are mainly linked to obstructed access to food, education, housing and health services. The continued insecurity both in the areas of origin as well as in those to which the displaced persons have fled, is an additional source of concern.

47. Among the most tragic features of the military campaign in ethnic areas is the disproportionate effect on civilian populations. In addition to the heightened risks posed by the widespread availability of small arms and light weapons and anti-personnel mines, the killing, terrorizing or displacement of civilians is often part of a deliberate strategy. The Special Rapporteur has received reports from reliable and independent sources alleging the militarization of refugee camps at the border that put also at risk the safety of civilians.

48. Violence against unarmed civilians by the Myanmar military is a very serious concern. The Government of Myanmar has a positive obligation under international humanitarian law to protect civilians from the effects of armed conflict and, therefore, needs to take the appropriate measures to end the targeting of civilians during military operations.

49. In western Myanmar, the Muslim minority has long been discriminated against, and is denied citizenship under the 1982 Citizenship Law. Muslim minority asylum-seekers continue to flee to Bangladesh. They are subject to serious abuses, especially forced labour (e.g., brick-baking, construction of roads, bridges, model villages and military facilities, camp maintenance, portering), arbitrary taxation and skyrocketing rice prices. Since January 2006, the Government-imposed physic nut agriculture is causing new hardships, including forced labour, extortion and land confiscation. The Special Rapporteur praises the presence of international humanitarian organizations and their expatriate staff in northern Rakhine State who have very much helped to provide protection to the Muslim minority from the Myanmar military and border security forces.

F. Land and management of natural resources

50. Access to and control over land and natural resources have long been central to the political economy of Myanmar. In many ethnic minority-populated areas, repeated incidents of forced displacement — interspersed with occasional periods of relative stability — have been a fact of life for generations. Some 75 per cent of the population is engaged in the agriculture sector (including fisheries, forestry and

livestock), which accounts for 40 per cent of the gross domestic product. Land and natural resources issues lie, therefore, at the heart of livelihood in Myanmar.

51. A large-scale and effectively arbitrary land confiscation policy prevails throughout the country. Several aims appear to form the basis of these confiscations, including relocating civilian populations deemed sympathetic to the armed opposition, anchoring military presence in disputed areas through the construction or support of new army battalions, opening the way for infrastructure development projects (e.g., Lawpita dam, three proposed Salween dams, Day Loh dam in Toungoo district), facilitating natural resources extraction (e.g., Arakan Shwee Gas offshore) and vesting various interest groups (including the military and foreign groups) with business opportunities (e.g., economic concessions, including logging and mining). This policy has led to numerous forced evictions, relocations and resettlements especially in rural areas but also in urban areas, most notably in connection with the move of the capital from Yangon to Pyinmana.

52. Under the Land Nationalization Act of 26 October 1953, all land is owned by the State. Legal practice in Myanmar today generally reverts to the above law, which recognizes some private ownership of agricultural land, although it restricts land sales or transfers. However, this law provides for the State to confiscate land that is left fallow. The current legislation on land offers little protection to rural farmers. In addition, victims of land confiscations are not encouraged to lodge complaints by fears of reprisals and knowledge of the lack of independence of the judiciary.

53. The Special Rapporteur is not aware of any specific provisions of the draft Constitution which would provide for secure land and housing rights of citizens, protect rights to fair and just compensation as a result of legal or illegal land or property expropriation or guarantee traditional practices of ethnic minorities in relation to land and natural resources management, such as collective property rights and swidden culture.

54. The Special Rapporteur views the ongoing large-scale confiscation of lands as a matter of grave concern that will continue to impact dramatically on the political and economic stability of the country, if not addressed. The Special Rapporteur notes the increasing recognition among human rights, humanitarian and development groups of the need to document issues related to land and natural resources management in Myanmar. In this context, he welcomes the organization in August 2006 in Chiang Mai by the Centre on Housing Rights and Evictions of a workshop on housing, land and property rights in Myanmar. The Special Rapporteur will further document this issue in his next report to the Human Rights Council in June 2007.

G. Humanitarian situation

55. According to numerous and consistent reports from the border areas, there have been marked signs of deterioration in the economic and social sectors that would lead to a humanitarian crisis, if the situation in eastern Myanmar is not adequately and urgently addressed.

56. Myanmar's ranking in the 2005 United Nations Development Programme (UNDP) Human Development Index was 129 out of 159 countries. Maternal

mortality in Myanmar is among the highest in South-East Asia, and only 40 per cent of children complete five years of primary education (considerably fewer in conflict-affected border areas). Rates of HIV/AIDS and tuberculosis infection remain among the highest in Asia. Malaria is the leading cause of morbidity and mortality, and most commonly affects the poor and other groups at risk. The potential pandemic threat with the March/April outbreak of H5N1 avian influenza remains of serious concern, although there is no human case of H5N1 in Myanmar.

57. Since 2005, new restrictions have been placed on actors in the humanitarian field. These restrictions, in the context of the complicated environment and pressure from outside lobbyists, have been used as a pretext for the withdrawal of the Global Fund to Fight AIDS, Tuberculosis and Malaria that the Special Rapporteur and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health have deeply deplored. The International Committee of the Red Cross (ICRC) has been subjected to increased restrictions in effectively carrying out its work. In recent months, Myanmar authorities have requested that representatives of Government-sponsored organizations accompany and supervise ICRC delegates on their visits to places of detention. As a result, ICRC has suspended all prison visits since December 2005. The restrictions imposed on ICRC are unfortunate as the Special Rapporteur continues to receive reports concerning allegations of serious cases of torture in interrogation centres and prisons and reports of degrading conditions of detention. The withdrawal of Médecins sans Frontières (France) at the end of 2005, due to access restrictions, has further complicated the humanitarian situation.

58. The new restrictive guidelines for United Nations agencies and international organizations announced by the Government in February 2006 added to the current difficulty for humanitarian workers to have access to project areas and operate independently, in accordance with internationally accepted standards. Although the Special Rapporteur recently received information about some signs of progress, there is still an urgent need for the Government of Myanmar to introduce some flexibility. In that regard, the Special Rapporteur encourages the Government to ensure a mutually agreeable operating environment for humanitarian agencies, in accordance with the guiding principles provided by the United Nations country team on 7 March 2006.

59. The Special Rapporteur welcomes the launching of the Three-Disease Fund,[1] which will provide funding roughly equivalent to that of the Global Fund to fight HIV, tuberculosis and malaria, and will start soon flowing to implementing agencies. It shows that donors have still an important commitment to humanitarian aid in Myanmar. The Special Rapporteur encourages the provision of humanitarian assistance to Myanmar. He also believes there must be transparency and accountability in the monitoring of the provision of humanitarian assistance to ensure that it is not misused for personal and individual gains. In addition, Myanmar nationals employed by agencies working in the country must be afforded protection from any forms of threats and intimidation for working on humanitarian assistance and development programmes.

[1] See "Myanmar plans to launch substitute fund to fight TB, malaria, HIV/AIDS after Global Fund grants suspended", June 2006, at http://www.medicalnewstoday.com.

H. International human rights obligations

60. The Government of Myanmar has an obligation to cooperate for the advancement of human rights under the Charter of the United Nations, which provides for the promotion of "universal respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

61. Myanmar is a party to the four Geneva Conventions of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime and the Convention Concerning the Protection of the World Cultural and Natural Heritage. It has not signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography and the United Nations Convention against Corruption.

62. Article 3 common to the four Geneva Conventions provides that "persons taking no active part in the hostilities ... shall in all circumstances be treated humanely" without any forms of discrimination. The Special Rapporteur considers that many human rights abuses in the conflict areas constitute a breach of international humanitarian law.

63. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child provide for monitoring mechanisms, known as treaty bodies, that follow up the implementation of the treaty by the States parties through the consideration of reports, which are to be regularly submitted by Governments. Although Myanmar submitted its initial report to the Committee on the Elimination of Discrimination against Women in 1999, it faces important delays in meeting its reporting obligations under the Convention and its second periodic report has been overdue since August 2002. The Special Rapporteur believes that the Government of Myanmar would benefit from a dialogue with the Committee in view of the widespread sexual violence against women and girls that prevails in the country. The initial and second periodic reports under the Convention on the Rights of the Child have been submitted. The third and fourth periodic reports are due in August 2008. The Special Rapporteur believes that it represents an opportunity for the Government of Myanmar working with civil society, the United Nations system and the Committee to engage in a discussion on sexual violence against girls and on the recruitment of child soldiers with a view to preparing its report to the Committee in the best conditions.

64. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child already reviewed Myanmar's reports and produced concluding observations and recommendations, providing guidance to the Government on how to fulfil its international human rights obligations. The Special Rapporteur would like to reiterate that recommendations made by treaty bodies for protecting and promoting human rights in Myanmar represent an important tool for policymakers and development practitioners. It is therefore important for the

Government of Myanmar and its partners to follow up these recommendations. They will help to measure political will, obstacles encountered and progress made, to identify new trends, and to complement the efforts made by the Government towards the protection and promotion of human rights.

65. Myanmar also acceded to a number of ILO Conventions, such as Conventions No. 29 on forced labour and No. 87 on freedom of association and protection of the right to organize which are of particular importance from a human rights perspective. In June 2006, the ILO Committee of Experts on the Application of Conventions and Recommendations observed that the Government of Myanmar has been strongly criticized by various ILO bodies regarding the implementation of Convention No. 29. The major focus of the criticisms related to the outcome of a 1997 Commission of Inquiry appointed by the Governing Body of ILO, which concluded that the "Convention was violated in national law and in practice in a widespread and systematic manner". The report of the Committee of Experts on the Application of Conventions and Recommendations refers to material that purports to be "from nearly every State and Division of the country on several hundreds of cases" of forced labour, including forced portering, repair and maintenance of army camps and villages for displaced people, cultivation of paddy and other fields, road construction, clearing of jungle areas, "human minesweeping", patrolling and sentry duty.[2] The Special Rapporteur believes that the implementation by Myanmar of the important conclusions made by the Committee last June would help to prevent significantly forced labour as they identified practical steps that are required to put an end to these abuses.

IV. Concluding remarks

66. **The human rights concerns enumerated in the present report are largely the same as those highlighted by the successive Special Rapporteurs since 1992. Despite early indications from the Government that it was willing to address these problems when the Special Rapporteur started his mandate six years ago, the Special Rapporteur regrets that such willingness has disappeared.**

67. **Recommendations formulated by the General Assembly, the former Commission on Human Rights, the Secretary-General of the United Nations and his former Special Envoy as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies, have not been implemented.**

68. **If the Government of Myanmar resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups to complete the drafting of the Constitution, the international community would be in a better position to recognize the democratic legitimacy of a constitutional framework to be built on Myanmar people's aspirations. The Special Rapporteur is also convinced that progress towards resolving the ethnic conflict in Myanmar will be much more facilitated and sustainable with tangible democratic reforms.**

[2] Report of the Committee of Experts on the Application of Conventions and Recommendations 2005 (76th session), Observation, para. 6.

69. The Special Rapporteur reminds the Government of Myanmar and non-State armed groups of their obligation to protect civilians from the effects of armed conflict.

70. The Special Rapporteur strongly commends the determined efforts of individuals and groups, including civil society organizations from both inside and outside the country who document human rights violations committed in Myanmar. He also wishes to acknowledge the crucial contribution made by international organizations, including members of the United Nations country team and non-governmental organizations who continue to operate in the country under extremely difficult circumstances. The United Nations has an obligation under the Charter of the United Nations to address the humanitarian situation that prevails in the country independently of the prevailing political situation.

71. The Special Rapporteur reiterates that humanitarian needs of the population in Myanmar must not be hostage of politics. The international community has the duty to address the humanitarian needs in the country and any decision should be guided by the best interests of children, women, people living with disabilities, those affected by diseases and minority groups.

V. Recommendations

72. The Special Rapporteur's recommendations given in earlier sections of the present report, as well as in his previous reports, remain valid in view of the prevailing situation in Myanmar. The Special Rapporteur would like also to stress the following specific recommendations.

73. The Special Rapporteur would like:

(a) To appeal to the Government of Myanmar to free all political prisoners and put an end to harassment and persecution of NLD members and representatives of ethnic groups;

(b) To encourage the Government of Myanmar to resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups to complete the drafting of the Constitution;

(c) To recommend that, given the magnitude of human rights abuses, the Government of Myanmar should subject all officials committing these acts to strict disciplinary control and punishment and put an end to the culture of impunity that prevails throughout the country. In that respect, a number of immediate steps should be undertaken, such as the setting up of (an) independent national commission(s) to look into the mob attack of Aung San Suu Kyi in November 1996 and the brutal Depayin massacre in May 2003, and to investigate the widespread sexual violence against women and girls with a view to improve on bringing to justice those responsible for such crimes;

(d) To call upon the Government of Myanmar to put an end to the criminalization of the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives;

(e) To encourage the Government of Myanmar to seek international technical assistance with the view to establish an independent and impartial judiciary that is consistent with international standards and principles;

(f) To urge the Government of Myanmar to take steps to improve conditions of detention;

(g) To recommend that the General Assembly consider calling on the Security Council to respond to the situation of armed conflict in eastern Myanmar where civilians are being targeted and where humanitarian assistance to civilians is being deliberately obstructed, and to call on the Government of Myanmar to authorize access to the affected areas by the Special Rapporteur, the United Nations and associated personnel, as well as personnel of humanitarian organizations and guarantee their safety, security and freedom of movement;

(h) To encourage the Government of Myanmar to ensure a mutually agreeable operating environment for humanitarian agencies in accordance with the guiding principles provided by the United Nations country team on 7 March 2006;

(i) To recommend that the General Assembly with other relevant United Nations bodies consider consulting with the Government of Myanmar to explore ways and means of deploying a fact-finding mission comprising representatives from relevant United Nations agencies to look into the humanitarian and human rights implications of the conflict in Kayin State;

(j) To call upon the Government of Myanmar to respect its obligation to protect civilians from armed conflicts under international humanitarian law;

(k) To encourage the Government of Myanmar to take steps to finalize its second periodic report to the Committee on the Elimination of Discrimination against Women that was due on 21 August 2002, and to work with civil society, the United Nations system and the Committee on the Rights of the Child for the submission of its third and fourth periodic reports under the Convention on the Rights of the Child;

(l) To further encourage the Government of Myanmar to follow up on the recommendations adopted by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.